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7 IN THE UNITED STATES DISTRICT COURT
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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 JOHN McCORMICK, guardian ad litem for
12 BARBARA McCORMICK,

No. C-07-01711 MMC

13 Plaintiff,

ORDER REMANDING ACTION

14 v.

15 PENN TREATY NETWORK AMERICA
16 INSURANCE COMPANY,

Defendant

/

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18 Before the Court is defendant Penn Treaty Network America Insurance Company's
19 ("Penn") response to the Court's March 28, 2007 order to show cause why the above-titled
20 action should not be remanded for lack of subject matter jurisdiction and, in particular, for
21 failure to demonstrate that the amount in controversy in this purported diversity insurance
22 action exceeds \$75,000, as required by 28 U.S.C. § 1332(a). See Gaus v. Miles, Inc., 980
23 F.2d 564, 566-67 (1992) ("If it is unclear what amount of damages the plaintiff has
24 sought, . . . then the defendant bears the burden of actually proving the facts to support
25 jurisdiction, including the jurisdictional amount.") (emphasis in original).

26 Penn argues the amount in controversy exceeds \$75,000 because more than
27 \$80,000 in benefits remain potentially available under plaintiff's long-term care policy. (See
28 Beck Decl. ¶ 3.) Plaintiff correctly argues, however, that, for purposes of determining the

1 amount in controversy, the Court considers only the amount of insurance benefits
 2 assertedly due at the time of removal, not the total amount of future benefits available
 3 under the policy. See, e.g., Commercial Casualty Ins Co. v. Fowles, 154 F.2d 884, 886 (9th
 4 Cir. 1946) (finding district court lacked subject-matter jurisdiction where amount of disability
 5 benefits assertedly due on date complaint was filed did not meet jurisdictional amount;
 6 disregarding claim for future benefits); Massachusetts Casualty Ins. Co. v. Harmon, 88
 7 F.3d 415, 416-17 (6th Cir. 1996) (“[F]uture potential benefits may not be taken into
 8 consideration in the computation of the amount in controversy in diversity actions in Federal
 9 District Courts involving disability insurance where the controversy concerns merely the
 10 extent of the insurer’s obligation with respect to disability benefits and not the validity of the
 11 policy.”) (internal quotation and citation omitted).

12 Here, plaintiff alleges that Penn stopped paying benefits in August 2005, (see
 13 Compl. ¶ 11), and submits evidence that the maximum policy benefit was \$80 per day, (see
 14 Plaintiff’s Response Ex. A). Assuming, arguendo, plaintiff was entitled to the maximum
 15 policy benefit for the entire period from August 1, 2005 to March 26, 2007, the date of
 16 removal, plaintiff would be entitled to benefits in the amount of \$48,160, a sum that is less
 17 than the jurisdictional amount.

18 Penn additionally argues that the amount in controversy meets the jurisdictional
 19 requirement because plaintiff “seeks punitive and exemplary damages, attorneys’ fees, pre-
 20 judgment interest, and costs of suit.” (See Penn’s Response to Order to Show Cause at
 21 3:2-4.) As plaintiff points out, however, Penn submits no evidence with respect to the
 22 likelihood that such relief would be awarded, much less any evidence with respect to the
 23 dollar amounts that likely would be awarded. Consequently, Penn has failed to meet its
 24 “burden of actually proving the facts to support . . . the jurisdictional amount,” see Gaus,
 25 980 F.2d at 567, and has not demonstrated that the amount in controversy in the instant
 26 action exceeds \$75,000. “Federal jurisdiction must be rejected if there is any doubt as to
 27 the right of removal in the first instance.” See id.

28 Accordingly, pursuant to 28 U.S.C. § 1447(c), the above-titled action is hereby

1 REMANDED to the Superior Court for the County of Alameda.

2 The Clerk shall close the file.

3 **IT IS SO ORDERED.**

4 Dated: April 19, 2007


5 MAXINE M. CHESNEY
6 United States District Judge

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